United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 10-2123**
	)	**Issued: July 18, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Jackson, MS, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2010 appellant filed a timely appeal from a March 30, 2010 decision of the Office of Workers' Compensation Programs (OWCP) which granted appellant a schedule award. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than 10 percent permanent impairment of the right upper extremity for which he received a schedule award.

FACTUAL HISTORY

On February 19, 2009 appellant, then a 69-year-old clerk, filed a Form CA-1, traumatic injury claim, alleging that he slipped and fell injuring his right shoulder that day. OWCP

[1] 5 U.S.C. §§ 8101-8193.

accepted tear of the right rotator cuff. Appellant stopped work on February 19, 2009 and returned to light duty in August 2009. He retired on October 31, 2009.

OWCP authorized surgery. On May 14, 2009 Dr. Jason A. Craft, a Board-certified orthopedist, performed a right shoulder arthroscopic rotator cuff repair, subacromial decompression, acromioclavicular joint resection, and limited debridement of labral fraying and synovitis. He diagnosed right shoulder rotator cuff tear, acromioclavicular joint arthritis, subacromial impingement and labral fraying and synovitis. In an October 19, 2009 report, Dr. Craft noted edema around the rotator cuff with a tight shoulder capsule and diagnosed mild arthrofibrosis and recommended manipulation under anesthesia. On November 4, 2009 he performed a right shoulder arthroscopy, manipulation and debridement of adhesions and limited debridement including biceps tendon release. Dr. Craft diagnosed right shoulder arthrofibrosis status post rotator cuff repair.

On March 22, 2010 appellant filed a claim for a schedule award. In a January 12, 2010 report, Dr. Craft noted findings upon examination of soreness with occasional pain. Active forward flexion was 160 degrees, external rotation was 90 degrees with a deficit of 10 degrees of extension. Dr. Craft advised that appellant reached maximum medical improvement on December 22, 2009. He opined that, pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[2] (A.M.A., *Guides*), appellant sustained a seven percent impairment of the right upper extremity. Dr. Craft noted that in a class 1 right rotator cuff tear, appellant had five percent impairment. Due to appellant's restrictions in regard to pain and weakness and functional modifiers, he moved to a seven percent impairment for the upper extremity.

OWCP referred Dr. Craft's report to OWCP's medical adviser. In a March 16, 2010 report, the medical adviser disagreed with Dr. Craft's findings and stated that appellant had 10 percent impairment of the right arm. He noted that Dr. Craft found a seven percent impairment of the right upper extremity based on pain, weakness and functional modifier which was incorrect. The medical adviser explained that appellant's impairment rating was based on a diagnosis of acromioclavicular joint injury or disease, distal clavicle resection, which in accordance with the A.M.A., *Guides*, Chapter 15, represented a class 1 impairment with a default grade of C. The default grade C, for the Class of Diagnosis (CDX) was 10 percent impairment based on the shoulder grid, Table 15-5, page 403, of the A.M.A., *Guides*. The medical adviser applied the grade modifier for functional history, one, under Table 15-7 and for physical examination, one, under Table 15-8 to the net adjustment formula to find no additional impairment. He noted that the grade modifier for clinical studies was not applicable as the A.M.A., *Guides* provide that, if a finding was used for placement of a diagnosis within a specific class in a diagnosis-based impairments grid, that same finding cannot also be used as a grade modifier. As the net adjustment formula yielded no additional impairment, the medical adviser concluded that appellant had a total of 10 percent impairment of the right arm.

[2] A.M.A., *Guides* (6th ed. 2008).

In a decision dated March 30, 2010, OWCP granted appellant a schedule award for 10 percent permanent impairment to the right upper extremity. The period of the award was for 31.2 weeks from December 22, 2009 to July 28, 2010.

LEGAL PRECEDENT

The schedule award provision of the Act[3] and its implementing regulations[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5] Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008).[6]

ANALYSIS

Appellant's claim was accepted by OWCP for right rotator cuff tear. OWCP authorized arthroscopic surgery on the right shoulder which was performed on May 14 and November 4, 2009 for a distal clavicle resection of the right rotator cuff. The Board finds that the medical evidence of record establishes 10 percent impairment to appellant's right arm.

Appellant submitted a January 12, 2010 report from Dr. Craft who opined that appellant had seven percent impairment of the right upper extremity pursuant to the A.M.A., *Guides.* Dr. Craft opined that appellant had five percent impairment attributable to his rotator cuff tear and found an additional two percent impairment attributable to pain weakness and functional modifiers. He, however, did not specifically indicate how he applied the A.M.A., *Guides*, to rate impairment. OWCP requested that its medical adviser review the medical record and determine whether he sustained permanent impairment of the right arm.

The medical adviser reviewed Dr. Craft's report and correlated his findings to provisions in the A.M.A., *Guides*. He followed the assessment formula of the sixth edition of the A.M.A., *Guides*, Chapter 15, section 15-2, entitled Diagnosis-Based Impairment. The A.M.A., *Guides*, provide that the diagnosis-based impairment is the primary method of evaluation of the upper limb.[7] The initial step in the evaluation process is to identify the impairment class by using the corresponding diagnosis-based regional grid. The medical adviser utilized the Shoulder

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[6] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

[7] A.M.A., *Guides*, 387, section 15.2.

Regional Grid, Table 15-5, A.M.A., *Guides*, page 403, and identified a class 1 impairment based on acromioclavicular joint injury or disease, status post distal clavicle resection. Under Table 15-5, the default grade, C, for such a class 1 acromioclavicular joint injury or disease, status post distal clavicle resection is 10 percent upper extremity impairment.

After determining the impairment class and default grade, the medical adviser determined whether there were any applicable grade adjustments for so-called nonkey factors or modifiers. These include adjustments for functional history, physical examination and clinical studies. The grade modifiers are used in the net adjustment formula to calculate a net adjustment.[8] The final impairment grade is determined by adjusting the grade up or down from the default value C by the calculated net adjustment. OWCP's medical adviser identified two modifiers; one based on the functional history and the other based on physical examination. For the functional history, he assigned a grade modifier 1 and also found a grade 1 modifier based on appellant's physical examination findings which were essentially normal.[9] Applying the net adjustment formula resulted in a net modifier of zero which resulted in a net adjustment of zero.

The Board finds that OWCP's medical adviser properly applied the A.M.A., *Guides*, to the findings presented by Dr. Craft in rating impairment to appellant's right upper extremity. The medical adviser reviewed the medical evidence and fully explained how he determined appellant's rating for the right upper extremity in conformance with the A.M.A., *Guides*. Although Dr. Craft offered an impairment rating, the Board notes that he did not fully explain how it was calculated and that the rating provided by OWCP's medical adviser supports a higher impairment percentage than that proposed by Dr. Craft.

On appeal, appellant contends that the schedule award is not adequate as his shoulder condition limits his daily activities, prohibits him from working and forced him to retire from his position. Under the schedule, Congress has defined the number of weeks of compensation payable for loss of use of a member.[10] For 100 percent impairment, or total loss of use, of an arm, FECA provides for 312 weeks of compensation.[11] As appellant has 10 percent impairment of the right arm, this represents 31.2 weeks of compensation (10 percent of 312 weeks) which is what he was awarded. Factors such as limitations on daily activities or recreational activities do not go into the determination of impairment under an award.[12] The medical evidence of record does not establish greater impairment in accordance with the sixth edition of the A.M.A., *Guides*. Appellant has not established more than 10 percent impairment of the right upper extremity.

[8] Net Adjustment = (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). A.M.A., *Guides* 411, section 15.3d.

[9] The medical adviser indicated that a clinical studies modifier was not applicable as a clinical studies finding, appellant's surgery, was used to establish appellant's diagnosis. *See* A.M.A., *Guides* 390 (if a physical examination or clinical studies finding is used to define the diagnosis-based impairment, it cannot also be used as an adjustment).

[10] *See Brent A. Barnes*, 56 ECAB 336 (2005).

[11] 5 U.S.C. § 8017(c)(1).

[12] *See E.L.*, 59 ECAB 405 (2008); *Dennis R. Stark*, 57 ECAB 306 (2006).

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has 10 percent impairment of the right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 18, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board